

1 AN ACT concerning real estate.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the
5 Notice and Opportunity to Repair Act.

6 Section 5. Findings. The General Assembly finds that
7 limited changes in the law are necessary and appropriate
8 concerning actions claiming damages, indemnity, or
9 contribution in connection with alleged residential
10 construction defects.

11 Section 10. Purpose. It is the intent of the General
12 Assembly that this Act apply to the types of civil actions
13 described in Section 5 while preserving adequate rights and
14 remedies for property owners who bring and maintain those
15 actions.

16 Section 15. Definitions. In this Act:

17 "Action" means any civil lawsuit or action in contract or
18 tort for damages or indemnity brought against a construction
19 professional to assert a claim, whether by complaint,
20 counterclaim, or cross-claim, for damage or the loss of use
21 of real or personal property caused by a defect in the
22 construction of a residence or in the substantial remodel of
23 a residence. "Action" does not include any civil action in
24 tort alleging personal injury or wrongful death to a person
25 or persons resulting from a construction defect.

26 "Claimant" means a homeowner who asserts a claim against
27 a construction professional concerning a defect in the
28 construction of a residence or in the substantial remodel of
29 a residence.

1 "Construction professional" means an architect, builder,
2 builder-vendor, contractor, subcontractor, engineer, or
3 inspector, including, but not limited to, any person
4 performing or furnishing the design, supervision, inspection,
5 construction, or observation of the construction of any
6 improvement to real property, whether operating as a sole
7 proprietor, partnership, corporation, or other business
8 entity.

9 "Homeowner" means any person, company, firm, partnership,
10 corporation, or association who contracts with a construction
11 professional for the construction, sale, or construction and
12 sale of a residence. "Homeowner" includes, but is not limited
13 to, a subsequent purchaser of a residence from any homeowner.

14 "Residence" means a single family house, duplex, triplex,
15 quadraplex, or a unit in a multiunit residential structure in
16 which title to each individual unit is transferred to the
17 owner under the Condominium Property Act and includes general
18 and limited common elements as defined in that Act.

19 "Serve" or "service" means personal service or delivery
20 by certified mail to the last known address of the addressee.

21 "Substantial remodel" means a remodel of a residence for
22 which the total cost exceeds the maximum amount for a small
23 claim under Supreme Court Rules.

24 Section 20. Applicability.

25 (a) This Act:

26 (1) Applies to any claim that arises before, on, or
27 after July 15, 2004, as the result of a construction
28 defect, except a claim for personal injury or wrongful
29 death, if the claim is the subject of an action commenced
30 on or after July 15, 2004.

31 (2) Prevails over any conflicting law otherwise
32 applicable to the claim or cause of action.

33 (b) This Act does not:

- 1 (1) bar or limit any defense otherwise available
2 except, as otherwise provided in this Act; or
3 (2) create a new theory upon which liability may be
4 based.

5 Section 25. Contractor liability. In a claim to recover
6 damages resulting from a construction defect, a contractor is
7 liable for his or her acts or omissions or the acts or
8 omissions of his or her agents, employees, or subcontractors
9 and is not liable for any damages caused by:

10 (1) the acts or omissions of a person other than
11 the contractor or his or her agent, employee, or
12 subcontractor;

13 (2) the failure of a person other than the
14 contractor or his or her agent, employee, or
15 subcontractor to take reasonable action to reduce the
16 damages or maintain the residence;

17 (3) normal wear, tear, or deterioration;

18 (4) normal shrinkage, swelling, expansion, or
19 settlement; or

20 (5) any construction defect disclosed to a claimant
21 before his purchase of the residence, if the disclosure
22 was provided in writing and in language that is
23 understandable and was signed by the claimant.

24 Section 30. Notice of claim of construction defects;
25 response by construction professional.

26 (a) In every construction defect action brought against
27 a construction professional, the claimant shall, no later
28 than 60 days before filing an action, serve written notice of
29 claim on the construction professional. The notice of claim
30 shall state that the claimant asserts a construction defect
31 claim against the construction professional and shall
32 describe the claim in reasonable detail sufficient to

1 determine the general nature of the defect.

2 (b) Within 21 days after service of the notice of claim,
3 the construction professional shall serve a written response
4 on the claimant by registered mail or personal service. The
5 written response shall:

6 (1) propose to inspect the residence that is the
7 subject of the claim and to complete the inspection
8 within a specified time frame; including the statement
9 that the construction professional shall, based on the
10 inspection, offer to remedy the defect, compromise by
11 payment, or dispute the claim;

12 (2) offer to compromise and settle the claim by
13 monetary payment without inspection; which may include,
14 but is not limited to, an express offer to purchase the
15 claimant's residence that is the subject of the claim,
16 and to pay the claimant's reasonable relocation costs; or

17 (3) state that the construction professional
18 disputes the claim and will neither remedy the
19 construction defect nor compromise and settle the claim.

20 (c) If the construction professional disputes the claim
21 or does not respond to the claimant's notice of claim within
22 the time stated in subsection (b), the claimant may bring an
23 action against the construction professional for the claim
24 described in the notice of claim without further notice.

25 If the claimant rejects the inspection proposal or the
26 settlement offer made by the construction professional
27 pursuant to subsection (b), the claimant shall serve written
28 notice of the claimant's rejection on the construction
29 professional. After service of the rejection, the claimant
30 may bring an action against the construction professional for
31 the construction defect claim described in the notice of
32 claim. If the construction professional has not received from
33 the claimant, within 30 days after the claimant's receipt of
34 the construction professional's response, either an

1 acceptance or rejection of the inspection proposal or
2 settlement offer, then at any time thereafter the
3 construction professional may terminate the proposal or offer
4 by serving written notice to the claimant, and the claimant
5 may thereafter bring an action against the construction
6 professional for the construction defect claim described in
7 the notice of claim.

8 (d) If the claimant elects to allow the construction
9 professional to inspect in accordance with the construction
10 professional's proposal pursuant to subdivision (b)(1) of
11 this Section, the claimant shall provide the construction
12 professional and its contractors or other agents reasonable
13 access to the claimant's residence during normal working
14 hours to inspect the premises and the claimed defect.

15 (e) Within 14 days following completion of the
16 inspection, the construction professional shall serve on the
17 claimant:

18 (1) a written offer to remedy the construction
19 defect at no cost to the claimant, including a report of
20 the scope of the inspection, the findings and results of
21 the inspection, a description of the additional
22 construction necessary to remedy the defect described in
23 the claim, and a timetable for the completion of such
24 construction;

25 (2) a written offer to compromise and settle the
26 claim by monetary payment pursuant to subdivision (b)(2)
27 of this Section; or

28 (3) a written statement that the construction
29 professional will not proceed further to remedy the
30 defect.

31 (f) If the construction professional does not proceed
32 further to remedy the construction defect within the agreed
33 timetable, or if the construction professional fails to
34 comply with the provisions of subsection (e), the claimant

1 may bring an action against the construction professional for
2 the claim described in the notice of claim without further
3 notice.

4 (g) If the claimant rejects the offer made by the
5 construction professional pursuant to subdivision (e)(1) or
6 (e)(2) to either remedy the construction defect or compromise
7 and settle the claim by monetary payment, the claimant shall
8 serve written notice of the claimant's rejection on the
9 construction professional. After service of the rejection
10 notice, the claimant may bring an action against the
11 construction professional for the construction defect claim
12 described in the notice of the claim. If the construction
13 professional has not received from the claimant, within 30
14 days after the claimant's receipt of the construction
15 professional's response, either an acceptance or rejection of
16 the offer made pursuant to subdivision (e)(1) or (e)(2), then
17 at any time thereafter the construction professional may
18 terminate the offer by serving written notice to the
19 claimant.

20 (h) Any claimant accepting the offer of a construction
21 professional to remedy the construction defect pursuant to
22 subdivision (e)(1) of this Section shall do so by serving the
23 construction professional with a written notice of acceptance
24 within a reasonable time period after receipt of the offer,
25 and no later than 30 days after receipt of the offer. The
26 claimant shall provide the construction professional and its
27 contractors or other agents reasonable access to the
28 claimant's residence during normal working hours to perform
29 and complete the construction by the timetable stated in the
30 offer. The claimant and construction professional may, by
31 written mutual agreement, alter the extent of construction or
32 the timetable for completion of construction stated in the
33 offer, including, but not limited to, repair of additional
34 defects.

1 (i) Any action commenced by a claimant prior to
2 compliance with the requirements of this Section shall be
3 subject to dismissal without prejudice and shall not be
4 recommenced until the claimant has complied with the
5 requirements of this Section.

6 (j) Nothing in this Section may be construed to prevent
7 a claimant from commencing an action on the construction
8 defect claim described in the notice of claim if the
9 construction professional fails to perform the construction
10 agreed upon, fails to remedy the defect, or fails to perform
11 by the timetable agreed upon pursuant to subdivision (b)(1)
12 or subsection (h) of this Section.

13 (k) Prior to commencing any action alleging a
14 construction defect, or after the dismissal of any action
15 without prejudice pursuant to subsection (i), the claimant
16 may amend the notice of claim to include construction defects
17 discovered after the service of the original notice of claim
18 and must otherwise comply with the requirements of this
19 Section for the additional claims. The service of an amended
20 notice of claim shall relate back to the original notice of
21 claim for purposes of tolling statutes of limitations and
22 repose. Claims for defects discovered after the commencement
23 or recommencement of an action may be added to such action
24 only after providing notice to the construction professional
25 of the defect and allowing for response under subsection (b).

26 Section 35. Effect of non-compliance.

27 (a) If a claimant unreasonably rejects a reasonable
28 written offer of settlement made as part of a response made
29 pursuant to Section 30 of this Act or does not permit the
30 contractor or independent contractor a reasonable opportunity
31 to inspect or to repair the defect pursuant to an accepted
32 offer of settlement and thereafter commences an action
33 governed by this Act, the court in which the action is

1 commenced may:

2 (1) deny the claimant's attorney's fees and costs;
3 and

4 (2) award attorney's fees and costs to the
5 contractor.

6 (b) Any sums paid under a homeowner's warranty, other
7 than sums paid in satisfaction of claims that are collateral
8 to any coverage issued to or by the contractor, shall be
9 deducted from any recovery.

10 (c) If a contractor fails to comply with the
11 requirements of this Act, the claimant shall not be obligated
12 to further comply with the provisions of this Act and shall
13 be allowed to commence an action without satisfying any other
14 requirement of this Act; none of the provisions of this Act
15 shall be applied to the detriment of the claimant.

16 Section 40. Construction defect list.

17 (a) In every action brought against a construction
18 professional, the claimant, including a construction
19 professional asserting a claim against another construction
20 professional, shall file with the court and serve on the
21 defendant a list of known construction defects in accordance
22 with this Section.

23 (b) The list of known construction defects shall contain
24 a description of the construction that the claimant alleges
25 to be defective. The list of known construction defects shall
26 be filed with the court and served on the defendant within 30
27 days after the commencement of the action or within such
28 longer period as the court in its discretion may allow.

29 (c) The list of known construction defects may be
30 amended by the claimant to identify additional construction
31 defects as they become known to the claimant.

32 (d) The list of known construction defects shall
33 specify, to the extent known to the claimant, the

1 construction professional responsible for each alleged defect
2 identified by the claimant.

3 (e) If a subcontractor or supplier is added as a party
4 to an action under this Section, the party making the claim
5 against such subcontractor or supplier shall serve on the
6 subcontractor or supplier the list of construction defects in
7 accordance with this Section within 30 days after service of
8 the complaint against the subcontractor or supplier or within
9 such period as the court in its discretion may allow.

10 Section 45. Mandatory notice.

11 (a) The construction professional shall provide notice
12 to each homeowner, upon entering into a contract for sale,
13 construction, or substantial remodel of a residence, of the
14 construction professional's right to offer to cure
15 construction defects before a homeowner may commence
16 litigation against the construction professional. Such notice
17 shall be conspicuous and may be included as part of the
18 underlying contract signed by the homeowner.

19 (b) The notice required by subsection (a) shall be in
20 substantially the following form:

21 SECTIONS 1 THROUGH 40 OF THE NOTICE AND OPPORTUNITY TO
22 REPAIR ACT CONTAIN IMPORTANT REQUIREMENTS YOU MUST FOLLOW
23 BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION
24 AGAINST THE SELLER OR BUILDER OF YOUR HOME. SIXTY (60)
25 DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO
26 THE SELLER OR BUILDER A WRITTEN NOTICE OF ANY
27 CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND
28 PROVIDE YOUR SELLER OR BUILDER THE OPPORTUNITY TO MAKE AN
29 OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT
30 OBLIGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER OR
31 SELLER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER
32 STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR
33 ABILITY TO FILE A LAWSUIT.

1 (c) This Act shall not preclude or bar any action if
2 notice is not given to the homeowner as required by this
3 Section.

4 Section 50. No effect on other rights. Nothing in this
5 Act shall be construed to hinder or otherwise affect the
6 employment, agency, or contractual relationship between
7 homeowners and construction professionals during the process
8 of construction or remodeling and does not preclude the
9 termination of those relationships as allowed under the law.
10 Nothing in this Act shall negate or otherwise restrict a
11 construction professional's right to access or inspection
12 provided by law, covenant, easement, or contract.

13 Section 55. Tolling of statutes of limitations and
14 repose. If a written notice of claim is served under Section
15 30 of this Act within the time prescribed for the filing of
16 an action under this Act, the statutes of limitations for
17 construction-related claims are tolled until 75 days after
18 the period of time during which the filing of an action is
19 barred under the applicable statute of limitations.